

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

THE BOEING COMPANY

and

CASE 11-CA-77979

INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND AEROSPACE  
WORKERS, AFL-CIO

*Elaine Robinson-Fraction, Esq.,*  
for the Acting General Counsel.<sup>1</sup>

*Alston D. Correll, Esq.*  
for the Respondent.<sup>2</sup>

*William H. Haller, Esq.,*  
for the Charging Party.<sup>3</sup>

DECISION

Statement of the Case

**WILLIAM NELSON CATES, Administrative Law Judge.** This case was tried in Charleston, South Carolina, on September 12, 2012.<sup>4</sup> The Union filed a charge initiating this matter on April 3 (thereafter amended), and the Acting General Counsel issued the complaint on June 29.<sup>5</sup> The government alleges the Company, about April 10, engaged in an act of interference with its employees protected rights.

The Company, in its answer to the complaint and at trial, denies having violated the National Labor Relations Act, as amended (Act) in any manner set forth in the complaint.

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<sup>1</sup> I shall refer to counsel for the Acting General Counsel as counsel for the government and to the National Labor Relations Board (Board) as the government.

<sup>2</sup> I shall refer to counsel for the Respondent as counsel for the Company and I shall refer to the Respondent as the Company.

<sup>3</sup> I shall refer to counsel for the Charging Party as counsel for the Union and I shall refer to the Charging Party as the Union.

<sup>4</sup> All dates are 2012, unless otherwise indicated.

<sup>5</sup> I granted the government's unopposed motion, at trial, to withdraw the allegations set forth in paragraph 7 of the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified and I rely on those observations in making credibility determinations here. I have studied the whole record, and based on the detailed findings and analysis below, I conclude and find the Company violated the Act essentially as alleged in the complaint.

## Findings of Fact

### I. Jurisdiction, Supervisory/Agency Status, and Labor Organization Status

The Company is a corporation with an office and place of business in North Charleston, South Carolina, where it is, and continues to be, engaged in the assembly and nonretail sale of aircraft. During the 12-month period ending May 31, the Company, in conducting its operations, purchased and received at its North Charleston, South Carolina, facility, goods, and services valued in excess of \$50,000 directly from points outside the State of South Carolina. The parties admit and I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is admitted that, at all times material herein, Human Resources Manager Conja Rice (HR Manager Rice or Rice) and Supervisor Darrell Mathis (Supervisor Mathis or Mathis) are supervisors and agents of the Company within the meaning of Section 2(11) and (13) of the Act.

The parties stipulated and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. Alleged Unfair Labor Practices

#### A. Issue and Facts

##### 1. Issue

The sole issue here is whether HR Manager Rice, about April 10 at the Company, instructed employees they could not talk about the Union during working time.

##### 2. Government's evidence

The government presented one witness, Ronald Bourrillion (Bourrillion), who works as a construction mechanic in the mid-body assembly building (Bldg 8820), on first shift, in work cell 10 along with approximately 90 other employees. Bourrillion has worked for the Company for approximately 3 years and actively supports unionization of the work force. At work Bourrillion has worn union shirts, distributed union literature, and attempted to educate his coworkers on the Union. On April 10 Bourrillion was directed by his then supervisor, Mathis, to attend a meeting in the Human Resources Department with HR Manager Rice. Bourrillion, Mathis, and Rice met for a few (10 to 15) minutes. Bourrillion testified Rice told him an unnamed supervisor had

contacted her that some employees approached him saying they had overheard Bourrillion speaking about the Union on Company time. Bourrillion refuted Rice's claims and explained he was well aware of labor laws and knew he could speak with employees before and after work and during lunch and break times; and, that those he spoke with would also have to be on break or lunch times. According to Bourrillion, Rice said she just wanted to make sure he was aware of that and asked him to repeat after her that he would not talk about the Union on Company time. Bourrillion told Rice he was not a child, that he was aware of labor laws and knew when he could and could not speak with coworkers about the Union. Bourrillion said the meeting ended and added Rice did not give him any documents at the meeting.

Bourrillion testified he talked daily, during working time, with his co-workers about family, children, sports (Little League), and life in general. Bourrillion talked, at work, with supervisors about sports, hockey teams (Rangers and Flyers), football, blood pressure medications, and his supervisor's traveling church choir. Bourrillion was unaware of any Company rule prohibiting the distribution of literature during lunch time in the lunch room or during break times in the break room.

Bourrillion testified, on cross examination, he distributed union fliers at the Company on the day he was called to Rice's office but said neither Rice nor Mathis mentioned flyer distribution at the meeting. Bourrillion did not report to anyone else in management what Rice told him at the meeting. He acknowledged no one else in management ever told him he could not talk about the Union on Company time.

Bourrillion was not disciplined as a result of the meeting nor for any actions leading up to the meeting.

### 3. Company's evidence

The Company called two witnesses, namely HR Manager Rice and Supervisor Mathis, in support of its defense.

Rice has only been with the Company for approximately 9 months but has 15 years human resources experience at other companies. Additionally, Rice was provided training by the Company on dealing with employees who might engage in union organizing activities. Rice is assigned to provide human resources assistance to employees in cell 10 of the mid-body assembly building (Bldg. 8820). Rice said she met with Bourrillion on April 10 because she received an email on that date, which had been originated by an employee addressed to his manager, Jane Lyons, asking what to do regarding an employee handing out forms for the Union during working hours. The employee, in his email, also indicated it had been reported to him Bourrillion had been in cell 30 talking with two employees. It was Rice's understanding, from the email, Burrillion had been outside his work area, not on break time, handing out literature and talking about the Union with two the employees.

As a result of the email Rice asked Bourrillion's supervisor, Mathis, to bring Bourrillion to her office for a level set meeting to discuss what was allowed under the Company's distribution policy and to make sure Bourrillion understood he needed to distribute and engage in

union activity outside of his work time and outside of his work area. Rice explained to Bourrillion she had received a complaint he was out of his work area not on break time handing out fliers and talking about the Union. Rice reminded Bourrillion he “could only distribute flyers and talk about the Union outside of his normal work time during his breaks and outside of his work area.” Rice asked Bourrillion to repeat to her he understood the Company’s policies. Rice denied telling Bourrillion he could not talk about the Union and/or could not talk about the Union on Company time. Rice explained that her instructions on Company policy to Bourrillion were “he could distribute materials and speak about the Union during non-work times and non-work areas.” Supervisor Mathis did not say anything during the meeting, but, testified Rice told Bourrillion he could not talk about or solicit for the Union during Company time.

Rice testified, that to her knowledge, no employee, at this facility, had ever been disciplined for discussing union matters on Company time.

It is appropriate to address credibility with respect to the three witnesses. In arriving at my conclusions, I was impacted by impressions I formed as I observed the witnesses testify. From appearance alone each witness was as credible as the other. Although I do not comment on all testimony, I have; however, considered all as well as the exhibits in arriving at the facts here. First, it is undisputed a meeting took place on April 10 in the human resource department with Rice, Mathis, and Bourrillion in attendance. Second, it is likewise undisputed the meeting came about as a result of activities Bourrillion engaged in near cell 30 in the mid body assembly building (Bldg. 8820) on that date. Third, I find certain portions of Bourrillion’s and Rice’s testimony to be accurate but, as explained, I reject portions of both witnesses testimony. I credit Rice’s testimony that distribution of flyers was covered in the meeting. I do so, in large part, because the email giving rise to the meeting addresses distribution and Bourrillion engaged in the distribution of flyers that morning. In crediting Rice on this point I am not unmindful Bourrillion denied distribution of flyers ever came up in the meeting. Simply stated I do not credit that portion of Bourrillion’s testimony. I credit Bourrillion’s testimony Rice addressed, in connection with the distribution of flyers, when and where he could talk about the Union with coworkers. Bourrillion, Rice, and Mathis all testified that talking about the Union was discussed. I specifically credit Bourrillion’s testimony Rice asked him to repeat after her that he would not talk about the Union on Company time. HR Manager Rice described her comments to Bourrillion as being he could talk about the Union and distribute flyers outside of his normal work time and work area. Supervisor Mathis testified, and I credit his testimony, Rice told Bourrillion he could not talk about or solicit for the Union during Company time. I am not unmindful Rice specifically denied telling Bourrillion he could not talk about the Union on Company time. I do not rely on that specific portion of her testimony because the overall evidence demonstrates, to my satisfaction, it is not accurate and I do not rely on or credit it.

It is undisputed Bourrillion spoke with coworkers and supervisors about various sports activities, family, children, medical conditions, traveling, and related subjects while on work time in working areas.

### III. Discussion, Analysis, and Conclusions

5 It is clear Bourrillion was, and continues to be, an active union supporter and he engaged in union activities the morning he was summoned to HR Manager Rice's office for a discussion concerning when such activities (talking and distributing literature) would be allowed. Pertinent here, Rice told Bourrillion he could not talk about the Union on Company time. It is clear employees were not prohibited from, and in fact, talked about various subjects unrelated to their work tasks on Company time. For example, Bourrillion talked with coworkers, as well as supervisors, about sports, family, medications, and a traveling church choir during working time.

The Board in *Jensen Enterprises, Inc.*, 339 NLRB 877, 878 (2003), held:

15 It is settled law that an employer may forbid employees from talking about a union during periods when the employees are supposed to be actively working, if that prohibition also extends to other subjects not associated nor connected with their work tasks. However, an employer violates the Act when employees are forbidden to discuss unionization, but are free to discuss other subjects unrelated to work, particularly when the prohibition is announced or enforced only in response to specific union activity in an organizational campaign. *Willamette Industries*, 306 NLRB 1010, 1017 (1992); *Orval Kent Food Co.*, 278 NLRB 402, 407 (1986).

25 Here Rice promulgated a ban on discussion of all union related topics during working time. She did so, as she stated, to ensure Bourrillion, and presumably others, understood the Company's policy prohibiting talking about the Union on Company time; she even requested Bourrillion repeat to her the no talking policy she announced. HR Manager Rice's announcement to Bourrillion, of the prohibition, came immediately after he had engaged in union campaigning type activities that morning at the Company. Rice's promulgating a discriminatory rule prohibiting employees from talking about the Union during working time, while allowing discussions by employees on nonwork-related matters during working time violates Section 8(a)(1) of the Act and I so find.

#### CONCLUSIONS OF LAW

1. The Company, The Boeing Company, is an employer engaged in commerce with the meaning of Section 2(2), (6), and (7) of the Act.

40 2. The Union, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By promulgating and enforcing a discriminatory rule prohibiting employees from talking about the Union during worktime, while allowing other nonwork-related discussions by employees the Company has violated Section 8 (a)(1) of the Act.

**REMEDY**

5 Having found the Company has engaged in certain unfair labor practices, I find it must be  
ordered to cease and desist and to take certain affirmative action designed to effectuate the  
policies of the Act. I recommend the Company be ordered, within 14 days after service by the  
Region, to post an appropriate "Notice to Employees" in order that employees may be apprised  
of their rights under the Act, and the Company's obligation to remedy its unfair labor practices.

10 On these findings and conclusions of law and on the entire record, I issue the following  
recommended<sup>6</sup>

**ORDER**

15 The Company, The Boeing Company, North Charleston, South Carolina, its officers,  
agents, successors, and assigns, shall

20 1. Cease and desist from

(a) Promulgating and enforcing a discriminatory rule prohibiting employees  
from talking about the Union during worktime, while allowing other nonwork-related  
discussions by employees.

25 (b) In any like or related manner interfering with, restraining, or coercing  
employees in the exercise of the rights guaranteed them by Section 7 of the Act.

30 2. Take the following affirmative action designed to effectuate the policies of the  
Act.

(a) Within 14 days after service by the Region, post at its North Charleston,  
South Carolina facility, copies of the notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms  
provided by the Regional Director for Region 11, after being signed by the Company's  
authorized representative, shall be posted by the Company and maintained for 60 consecutive  
35 days in conspicuous places including all places where notices to employees are customarily  
posted. In addition to physical posting of paper notices, notices shall be distributed  
electronically, such as email, posting on an intranet or an internet site, or other electronic means,  
if the Company customarily communicates with its employees by such means. Reasonable steps  
shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by  
40 any other material. In the event that, during the pendency of these proceedings, the Company

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<sup>6</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>7</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since April 10, 2012.

5           Dated at Washington, D.C. October 26, 2012

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**William Nelson Cates**  
**Administrative Law Judge**





**APPENDIX**

**NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

**WE WILL NOT** promulgate and/or enforce a discriminatory rule prohibiting our employees from talking about the International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization, during worktime, while permitting other nonwork-related discussions by our employees.

**WE WILL** notify our employees we do not object to them talking about the International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization, as long as we allow other nonwork-related discussions by our employees.

**The Boeing Company**  
**(Employer)**

**Dated:** \_\_\_\_\_ **By** \_\_\_\_\_  
**(Representative)** **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

4035 University Parkway, Republic Square, Suite 200 Winston-Salem, NC 27106-3325  
(336) 631-5201, Hours: 8:00 a.m. to 4:30 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (336) 631-5216